

or dividend payment within 30 days after the payor receives the certification from the payee in the manner required by § 31.3406(d)-2.

(f) *Rule for determining when the payor receives a taxpayer identification number or certificate from a payee.* In determining whether a payee has failed to provide a taxpayer identification number or any certification to a payor (including a Form W-8 or substitute form), a payor is required to process the taxpayer identification number or certification within 30 days after the payor receives the taxpayer identification number or certification from the payee or in certain cases, from a broker. Thus, the payor may take up to 30 days to treat the taxpayer identification number or a certificate as having been received.

[T.D. 8637, 60 FR 66127, Dec. 21, 1995]

§ 31.3406(f)-1 Confidentiality of information.

(a) *Confidentiality and liability for violation.* Pursuant to section 3406(f) no person may use any information obtained under section 3406 for any purpose except for the purpose of complying with the requirements of section 3406 or for purposes permitted under section 6103 (subject to the safeguards of section 6103). See section 7431 for civil damages for violating the confidential use of the information (subject to an exception for good faith).

(b) *Permissible use of information—(1) In general.* A payor or broker may transmit information on a Form W-9, Form W-8, or other acceptable form relating to withholding to the department, institution, or firm (or to any employee therein) responsible for withholding or processing of taxpayer identification numbers, certifications described in § 31.3406(h)-3, or other substitute forms. In addition, a broker may notify the payor with respect to a readily tradable instrument of the requirement to withhold and the condition or conditions for imposing withholding (as described in § 31.3406(d)-4) that exist with respect to the payee. A payor or broker may, without violating the Internal Revenue Code, close an account of, refuse to open an account for, issue an instrument to, or redeem an instrument for, a person solely because

the person fails to furnish the person's taxpayer identification number or documentation of foreign status in the manner required in § 31.3406(d)-1 and § 31.3406(g)-1, respectively. A payor who closes an account of a payee in the calendar year in which the account was opened and during which no taxpayer identification number or evidence of foreign status was provided for that account will be presumed in the absence of evidence to the contrary to have closed the account without violating section 3406(f) even though the payee is subject to backup withholding under section 3406(a)(1)(A). A payor, except as provided in §§ 31.3406(d)-3 and 31.3406(g)-3, may not prohibit a payee who fails to furnish the payee's taxpayer identification number in the manner required in § 31.3406(d)-1 from withdrawing any funds in the account.

(2) *Window transactions.* In the case of a window transaction (as defined in § 31.3406(b)(2)-3(b)), a payor may, without violating the Internal Revenue Code, refuse to redeem or may refuse to make payment if the payee fails to provide a taxpayer identification number regardless of when the obligation was issued or acquired.

(c) *Specific restrictions on the use of information.* Except as provided in paragraph (b) of this section, a payor or broker is not permitted to—

(1) Close an account (or instrument) of a payee solely because that payee (or the account of a payee) is subject to withholding under section 3406(a)(1)(A), (B), (C), or (D);

(2) Refuse to open an account or to issue an instrument if the person fails to certify, under penalties of perjury, that the person is not subject to withholding under section 3406(a)(1)(C) (relating to notified payee underreporting);

(3) Use information obtained under section 3406 (including a payee's failure or inability to certify that the payee is not subject to withholding due to notified payee underreporting or the fact that the account is subject to withholding), surcharge an account (i.e., charge an account more than the fee charged a similar account that was not subject to withholding under section

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3406), or use that information to determine whether to open or close an account, whether to issue or redeem an instrument, or whether to extend credit to the payee.

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§ 31.3406(g)-1 Exception for payments to certain payees and certain other payments.

(a) *Exempt recipients*—(1) *In general.* A payor of any reportable payment (as defined in section 3406(b)) must not withhold under section 3406 if the payee is—

(i) An organization exempt from taxation under section 501(a) or an individual retirement account;

(ii) The United States or any wholly owned agency or instrumentality thereof;

(iii) A state, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(iv) A foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing (as defined in regulations under section 892); or

(v) An international organization or any wholly owned agency or instrumentality thereof (as defined in section 7701(a)(18)).

(2) *Nonexclusive list.* Paragraph (a)(1) of this section does not prescribe an exclusive list of payees that are exempt from information reporting and also are exempt from withholding under section 3406.

(b) *Determination of whether a person is described in paragraph (a)(1) of this section.* The determination of whether a person is a payee described in paragraph (a)(1) of this section must be made as provided in the applicable provisions of section 6049 and the regulations issued thereunder. A payor, even if permitted to treat a person as an exempt recipient without requiring a certificate under the provisions of section 6049, may require a payee, otherwise not required to file a certificate regarding its exempt status, to file a certificate and may treat a payee who

fails to file the certificate as a person who is not an exempt recipient. See § 31.3406(h)-3 for a description of the Form W-9 or a substitute form prescribed under section 3406 for claiming exempt status.

(c) *Prepaid or advance premium life-insurance contracts.* A payor of a reportable payment (as defined in section 3406(b)(1)) may, but is not required to, withhold under section 3406 on reportable payments made from January 1, 1984, to December 31, 1996, on prepaid or advance premium life-insurance contracts to a payee who is the owner for tax purposes of the prepaid or advance premium life-insurance contract. For purposes of this exception from backup withholding, a prepaid or advance premium life-insurance contract is one entered into on or before June 30, 1984, by the payee and under which the increment in value of the prepaid or advance premium is used for the payment of premiums during the period in which the exception from backup withholding applies.

(d) *Reportable payments made to Canadian nonresident alien individuals.* A payment of interest made to a Canadian nonresident alien individual under § 1.6049-8(a) of this chapter is not subject to withholding under section 3406.

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after December 31, 2000, a payor is not required to backup withhold under section 3406 on a reportable payment that qualifies for the documentary evidence rule described in § 1.6049-5(c)(1) or (4) of this chapter, whether or not documentary evidence is actually provided to the payor, unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required for payments upon which a 30-percent amount was withheld by another payor in accordance with the withholding provisions under chapter 3 of the Internal Revenue Code and the regulations under that chapter. For rules applicable to